United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,684

UNITED STATES OF AMERICA,

v.

EUGENE H. TINSLEY,

Appellant.

APPEAL FROM A JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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BRIEF FOR APPELLANT

STATEMENT OF QUESTIONS PRESENTED

The questions presented are:

1. Whether the Trial Judge erred in denying the Appellant's motion for dismissal of the indictment for lack of a speedy trial when (a) 21-1/2 months had elapsed between arrest and trial and (b) the delay resulted in substantial prejudice to the Appellant.

2. Whether the Appellant's conviction must be reversed or a new trial ordered because the Trial Judge in combination with the Prosecuting Attorney influenced the jury by damaging the credibility of the Appellant and his only other witness, thus denying the Appellant his right to a fair and impartial trial.

(This case has not previously been before this Court.)

REFERENCES TO RULINGS

The following rulings are presented for review by this court:

1. Defendant's Motion to Dismiss the Indictment for Lack of A Speedy Trial. Denied per J. Hart, October 31, 1968, on grounds that Defendant was responsible for the delay. Set forth in Affidavit of Raymond Rabin, Esq., dated June 11, 1969.

2. Judgment and Commitment in Criminal No. 196-68, filed December 17, 1968, per J. Hart, after a jury verdict.

JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the United States District Court for the District of Columbia, dated December 13, 1968, convicting Appellant of robbery under Section 2901 of Title 22 of the District of Columbia Code, assault with a dangerous weapon under Title 22, Section 502 of the District of Columbia Code, and carrying a dangerous weapon under Title 22, Section 3204 of the District of Columbia Code, and sentencing him from five to fifteen years on the robbery charge under Title 22, Section 2901 of the District of Columbia Code, three to nine years on the assault with a dangerous weapon charge under Title 22, Section 502 of the District of Columbia Code, and one year on the carrying a dangerous weapon charge under Title 22, Section 3215 of the District of Columbia Code. This Court has jurisdiction to review the judgment under the Act of June 24, 1948, C. 646, 62 Stat. 929; U.S.C. §1291, and Rule 37 of the Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

1. From Arrest to Trial: Over 21-1/2 Months:

(The Court is respectfully referred to the Opposition to Motion to Dismiss for Lack of a Speedy Trial, filed 31 October 1968, by United States Attorney, the Affidavit of Raymond Rabin, Esq., 11 June 1969.)

Mr. Eugene H. Tinsley was arrested on January 14, 1967 in connection with an alleged assault on, and the taking of $110 cash and several cigars from John C. Scott on that same day (Opposition to Motion to Dismiss for Lack of a Speedy Trial, filed 31 October 1968, by United States Attorney, p. 1). An indictment was finally returned against Mr. Tinsley on three counts, robbery (22 D.C.Code, Section 2901), assault with a dangerous weapon (22 D.C.Code, Section 502), and carrying a dangerous weapon (22 D.C.Code, Section 3204) on April 3, 1967 (Opposition, p. 1). On April 14, 1967 Mr. Tinsley was arraigned and entered a plea of Not Guilty on all three counts (Opposition, p. 1).

On November 28, 1967 a plea of Guilty to the robbery count was entered for Mr. Tinsley (Opposition, p. 1). On February 9, 1968 Mr. Tinsley moved to withdraw this

Guilty plea before sentence on the grounds that it was the result of a misunderstanding and that he had not intended to so plead (Opposition, p. 1). This motion was granted by Judge Walsh of the District Court in February of 1968 (Opposition, p. 1).

For some unexplained reason a new indictment based on the events of January 14, 1967 was finally returned on February 26, 1968 (Criminal Docket, 196-68, entry 26 Feb. 1968). This indictment was identical on all respects to that returned on April 1, 1967 and once again charged three counts, robbery (22 D.C.Code, Section 2901), assault with a dangerous weapon (22 D.C.Code, Section 502), and carrying a dangerous weapon (22 D.C.Code, Section 3204) (C.D., entry 26 Feb. 1968).

Mr. Tinsley was arraigned on this new indictment on March 8, 1968 and once again entered a plea of Not Guilty on each of the three counts (C.D., entry 8 Mar. 1968).

In chambers before Judge Hart of the District Court on October 31, 1968, some 21-1/2 months after arrest, some 19 months after indictment, some 18-1/2 months after arraignment and entry of Not Guilty pleas, Mr. Tinsley, by his counsel moved for dismissal of the indictment for lack of a speedy trial. While granting a similar motion on behalf

on a then co-defendant, John S. Houston, Judge Hart denied Mr. Tinsley's motion on the grounds that any delay had been caused by Mr. Tinsley (Affadavit of Raymond Rabin, Esq., 11 June 1969). No question of prejudice to either of the defendants was considered at that time and Judge Hart's ruling from which the appel is in part taken was based solely on a finding that Mr. Tinsley had caused the unreasonable delay in bringing this case to trial (Affadavit, 11 June 1969). From that ruling, the Defendant appeals.

2. The Trial:

(The Court is respectfully referred to pages 5, 8, 9, 10, 12, 13, 15, 18, 25, 38, 40, 56, 60, 61, 62, 71, 73, 75, 76, 77, 85, 87, 89, 90, 91, 102, 109, 110, 112, 113, 116, 125, 130, 131, 132, 140, 142, and 150 of the Transcript.)

At trial, the first Government witness was Mr. Scott, the Complainant (Tr. 8). He testified that in January, 1967, he was employed as a route salesman for the Home Juice Service Corporation (Tr. 5); that on Saturday, January 14, 1967, at about 6:45 p.m., when he had just finished making a delivery at 1861 Corcoran Street, Northeast, he was approached by a man offering to buy some orange juice (Tr. 8); that this

man, whom Mr. Scott identified as Mr. Tinsley (Tr. 9), got into the Home Juice Truck with him, pulled a gun, and informed him that this was a hold-up (Tr. 10); that he gave Mr. Tinsley $110.00 in a plastic bag he carried in the truck, and that Mr. Tinsley took some cigars from the dashboard (Tr. 10); that another man then approached, and Mr. Tinsley told this second man to "go get the car, that he had the money. . . ." (Tr. 10); that he, Mr. Scott, then caused the truck to buck by shifting gears, throwing Mr. Tinsley to the floor; that Mr. Tinsley then threatened to shoot him, but that he did not pull the trigger (Tr. 38); that a scuffle then ensued between Mr. Scott and Mr. Tinsley which began inside the truck and continued on the ground outside (Tr. 12); that a third man, whom Mr. Scott subsequently identified as one John S. Houston (Tr. 13), intervened and began patting Mr. Tinsley down in search of the money (Tr. 13); that Mr. Houston also entered the fight against him (Tr. 40); that the police subsequently arrived and arrested Mr. Tinsley and Mr. Houston; that after the arrest, he found $100.00 on the ground beside the truck, ". . . half was in the bag and some of it was around." (Tr. 15); and that he found the gun, inside the doorway of the truck (Tr. 18).

On cross-examination, Defense Counsel inquied of Mr. Scott why he was no longer working for Home Juice but Judge Hart told him to "quit searching along those lines." (Tr. 25).

The Government also called the two arresting policement, Josephus Brashears and Joseph F. Bell. Officer Brashears testified that he saw three men fighting when he arrived (Tr. 56); that it was Mr. Scott who had found the gun and that that was the first time he, Officer Brashears, had seen it (Tr. 60); that no fingerprints were taken from the gun because "In cases where policemen catch a defendant in the act of a robbery on the scene, because of the workload on the fingerprint men we usually don't get the fingerprints from the guns." (Tr. 62); but that he had seen no part of the alleged hold-up (Tr. 61).

Officer Bell stated that he had found $11.00 on the person of Mr. Houston during a search at the precinct (Tr. 71); that he found three cigars and a pocket lighter on the person of Mr. Tinsley (Tr. 73); that he had only seen men fighting (Tr. 75); and that he first saw the gun when Officer Brashears gave it to him (Tr. 76) and the money when Mr. Scott handed it over (Tr. 77). Thus the Government's case rested

solely on the testimony of the Complainant, Mr. Scott, since the two policemen did not see the alleged robbery and the gun was in no way traced to Mr. Tinsley.

At the close of the Government's case, Defense Counsel asked for a directed verdict on all three counts; his motion was denied (Tr. 85, 87).

Defense Counsel called the Defendant, Mr. Tinsley, as his first witness (Tr. 89). Mr. Tinsley testified that he had known Mr. Scott for about two years, because he had seen him in the neighborhood and in a gambling spot at 1831 Corcoran Street (Tr. 109, 110); that when he saw Mr. Scott on January 14, he asked him for some money that Mr. Scott owed him (Tr. 90); that Mr. Scott refused, and a fight began (Tr. 90); that he, Mr. Tinsley, did not own a gun nor did he have one on the night in question; that during the fight Mr. Scott had continually attempted to reach for something in his (Mr. Scott's) back pocket (Tr. 90, 91). Thus it was apparent that Mr. Tinsley's testimony rebutted all of Mr. Scott's testimony. The direct conflict between them would be resolved by the jury on the basis of their relative credibility.

On cross-examination, Mr. Tinsley stated he had been gambling at 1831 Corcoran Street at the home of a friend called "Sweetie Pie" during the afternoon of January 14 (Tr.

102). The Court began interrogating Mr. Tinsley at this point, asking with reference to the man called Sweetie Pie, "You have been gambling with him there a long time and you don't know his name?" (Tr. 102). Mr. Tinsley went on to say that he remembered seeing Mr. Scott in another gambling establishment in the area, at 1827 Corcoran Street (Tr. 112, 113). At this point the Court again intervened, asking, "Who ran that one?" (Tr. 112). Mr. Tinsley could not remember who owned the gambling place (Tr. 112).

He testified that he had loaned $50.00 to Mr. Scott January 6, 1967, in a crap game at 1831 Corcoran Street (Tr. 116). He was unable to remember the names of the other participants in the game (Tr. 116).

Mr. Tinsley stated that he had gotten the three cigars where he worked, at Mr. Z's Carryout (Tr. 125).

Defense Counsel also called John S. Houston, who testified that he saw Mr. Tinsley and Mr. Scott fighting, that he did not take part, but that he was pointed out as being with Mr. Tinsley and arrested (Tr. 130, 131); that he had not heard Mr. Tinsley ask for money or threaten Mr. Scott (Tr. 132); that he did not see the gun until the police showed

it to him at the precinct (Tr. 132); and that the $11.00 found on him was his own money (Tr. 132).

After Defense Counsel had rested, the Government called Mr. Scott in rebuttal (Tr. 140). He testified that he had never seen Mr. Tinsley before January 14 (Tr. 141); that he had never been in the premises at either 1827 or 1831 Corcoran Street (Tr. 142); and that he had not been in the neighborhood on January 6 because his delivery route took him to a different area of the city (Tr. 142).

At the close of all the evidence, Defense Counsel again moved for a verdict of acquittal; the motion was denied (Tr. 150). Mr. Tinsley was found guilty of all three charges. From that judgment, the Defense appeals.

3. The Sentence:

(The Court is respectfully referred to the Judgment and Commitment, Crim. No. 196-68, 17 Dec. 1968, and the Opposition to Motion to Dismiss for Lack of peedy Trial, filed 31 Oct. 1968, by U. S. Attorney.)

Mr. Tinsley was sentenced to five to fifteen years on the robbery charge under Title 22, Section 2901 of the District of Columbia Code, three to nine years on

the assault with a dangerous weapon charge under Title 22, Section 502 of the District of Columbia Code, and one year on the carrying a dangerous weapon charge under Title 22, Section 3215 of the District of Columbia Code (Judgment and Commitment, 17 Dec. 1968). It was further ordered that "The foregoing sentences are to be served consecutively to any sentence imposed prior to this date by any Court in this or any other jurisdiction, state or federal." (Judgment, 17 Dec. 1968).

Mr. Tinsley had been in the District of Columbia Jail from November 28, 1967 to April 4, 1968 as a result of the Guilty plea subsequently ordered vacated by Judge Walsh (Opposition, p. 1). It is not clear whether in imposing the above sentence Judge Hart intended that the time Mr. Tinsley spent in prison as a result of his vacated conviction was to be credited toward fulfillment of his present sentence. Counsel for the Appellant has written a letter to Judge Hart asking for a clarification; no reply has been received as yet. If it was Judge Hart's intention that the four month period not be credited toward his present sentence, then Appellant will appeal this ruling also, and will argue the point in his reply brief.

STATEMENT OF POINTS

1. The Trial Judge erred in denying the Appellant's motion for dismissal of the indictment for lack of a speedy trial.

a. Although the right to a speedy trial is fundamental, 21-1/2 months were allowed to elapse between the Appellant's arrest and trial.

b. The Trial Judge erred in ruling that the Appellant caused the delay.

(1) The Appellant did nothing to delay his trial on the assault with a deadly weapon and carrying a deadly weapon charges.

(2) The Appellant should not be held responsible for any delay in the robbery charge, because his only connection with any delay resulted from his exercise of his constitutional right to a jury trial.

c. Substantial prejudice to the Appellant's defense occurred because of the delay.

(1) The verdict turned on the credibility of the Complaining Witness and the Accused, the Appellant.

(2) Because of the delay, the Appellant could not remember the names of people who had been gambling with the Complaining Witness and him.

(3) This inability to remember damaged the Appellant's credibility and was highly prejudicial to his defense.

2. The Appellant was denied a fair and impartial trial because the actions of the Trial Judge and the Prosecuting Attorney were damaging to the credibility of his defense.

a. The jury's main function in this case was to determine the relative credibility of the Complaining Witness and the Appellant.

(1) The only evidence of the attempted robbery was the testimony of the Complaining Witness.

(2) This Complaining Witness' testimony was rebutted by the testimony of the Appellant, reinforced in part by Mr. Houston.

b. The conduct of the Trial Judge damaged the credibility of the Appellant, because it indicated to the jury that he believed the Complaining Witness, not the Appellant.

c. The Trial Judge in combination with the Prosecuting Attorney damaged the credibility of the only other defense witness by repeatedly implying to the jury that he, too, would face robbery charges in connection with the same alleged crime.

SUMMARY OF ARGUMENT

The Trial Judge erred in denying the Appellant's motion for dismissal of the indictment for lack of a speedy trial. The Supreme Court has held the constitutional right to a speedy trial to be a fundamental one, yet in the case, 21-1/2 months were allowed to elapse between Mr. Tinsley's (The Appellant) arrest and trial. The Trial Judge denied Mr. Tinsley's motion to dismiss for lack of a speedy trial, while granting a then co-defendant's identical motion, on the grounds that Mr. Tinsley had caused the delay. Mr. Tinsley, however, did nothing at all that could have delayed his trial on the assault with a deadly weapon and carrying a deadly weapon charges. In fact, the only connection the Appellant had at all with this unreasonable delay resulted from the unintentional entry of a plea of guilty to the robbery charge and his subsequent motion to vacate that plea which was granted in accordance with his constitutional right to a jury trial. He should not be penalized for exercising his constitutional rights, and even if he were, his total contribution to the delay was limited to 73 days in a total delay of 21-1/2 months. The Government must therefore bear the responsibility for at least 19 months of delay in the robbery charge.

Further, the delay resulted in substantial prejudice to the Appellant's defense. Mr. Tinsley's credibility was damaged when, during cross-examination almost two years after the alleged crime, he could not remember the names of people who had been gambling with the Complaining Witness and him. Since the case largely turned on the credibility of the Complaining Witness and the Appellant, this inability to remember, caused by the unreasonable delay, substantially prejudiced Appellant's defense.

In addition, the Appellant was denied his right to a fair and impartial trial. The only evidence that the alleged robbery occurred at all was the testimony of the Complaining Witness, since the two arresting policemen testified they saw only a fight on the street. The Appellant's testimony, as did the testimony of the only other defense witness, rebutted in full the testimony of the Compaining Witness. Thus the case turned on the jury's determination of the relative credibility of these three principal witnesses. The Trial Judge, however, damaged the Appellant's credibility because his conduct throughout the trial indicated to the jury that he did not believe the Appellant and that he did believe the Complaining Witness. The Trial Judge and the Prosecuting Attorney together damaged the

credibility of Appellant's other witness by repeatedly implying that he, too, would soon face robbery charges in connection with the same alleged crime, when, in fact, the indictment against this witness, Mr. Houston, had been dropped. In a case where the factual issues were as close as they are here, it is submitted that these factors served to deny the Appellant a fair and impartial trial.

ARGUMENT

I. THE TRIAL JUDGE ERRED IN DENYING THE APPELLANT'S MOTION FOR DISMISSAL OF THE INDICTMENT FOR LACK OF A SPEEDY TRIAL.

(The Court is respectfully referred to the Opposition to Motion to Dismiss for Lack of Speedy Trial, filed 31 October 1968, by U. S. Attorney, and to pages 116, 117 of the Transcript.)

A. The Appellant Is Entitled to a Speedy Trial:

The Supreme Court has held that the right to a speedy trial is as fundamental as the other rights guaranteed by the Sixth Amendment. Klopfer v. North Carolina, 386 U.S. 213, 223 (1967). This guarantee is intended to serve three purposes: first, to prevent lengthy pretrial imprisonment or pretrial restriction of movement when the defendant is on bail; second, to minimize the anxiety and other discomforts that one suffers when he is accused but not tried; and third, to insure that the accused's ability to answer the charges against him will not be impaired because of lost witnesses and faded memories due to the passage of time. Hanrahan v. United States, 348 F.2d 363 (D. C. Cir. 1965).

B. The Appellant Was Not Afforded A Speedy Trial:

In the present case, the Accused, Mr. Eugene H. Tinsley was arrested January 14, 1967, and brought to trial November 1, 1968, a delay of 21-1/2 months (Opposition, p. 1).

C. The Trial Judge Erred in Ruling That the Appellant Was Responsible for the Delay:

On October 31, 1968 the Trial Judge granted Co-Defendant Houston's motion to dismiss the Indictment against him for lack of a speedy trial. At the same time the Trial Judge denied an identical motion made by Appellant's attorney on the grounds that the Appellant had caused the delay. This ruling is plain error. The Appellant never asked for any continuances or extensions or took any action designed to delay the trial. At the worst the only connection the Appellant had with any part of this unreasonable delay resulted from the unintentional entry of a plea of guilty to the robbery charge on November 28, 1967. On his motion to vacate that plea on February 9, 1968, that plea was vacated in accordance with the Appellant's constitutional right to a jury trial absent an intelligent considered and intentional waiver. Patton v. United States, 50 S.Ct. 253, 281 U.S. 276, 74 L.Ed. 854 (1929); Adams v. United States ex. rel. McCann, 63 S.Ct. 236, 317 U.S. 269

(1942). It is plain error to hold that by exercise of one constitutional right (the right to a jury trial), the Appellant can be deemed to have waived another constitutional right (the right to a speedy trial). Simmons v. United States, 88 S.Ct. 967, 390 U.S. 377 (1968). Otherwise any accused who demands a trial by jury could be deemed to have waived his right to a speedy trial.

Accordingly, the Appellant clearly was not at fault and in no way constributed to any delay in his trial on counts two and three of the indictment, ADW and CDW, and, if his exercise of a constitutionally protected right can be deemed to have contributed to the delay in his trial on the robbery count, that contribution is limited to a total of 73 days or less than two and one-half months of a total delay over 21-1/2 months. Thus, the Government must bear the responsibility for at least 19 months of delay in the trial of the robbery charge.

D. The Delay of 21-1/2 Months Between Arrest and Trial Resulted in Substantial Prejudice to the Appellant:

As stated above, the Trial Judge did not rule on the question of prejudice to the Appellant arising

from the 21 1/2 month delay, but instead ruled on a threshold issued of the cause of the delay. That ruling was erroneous. Were it not for that erroneous ruling it seems clear that the Trial Judge would have granted Appellant's motion without any further showing of prejudice, as he in fact did with regard to Mr. Houston.

Thus, despite the fact that (1) Mr. Houston's motion didn't contain any factual showing of prejudice arising from the delay, and (2) the U. S. Attorney's Opposition to Mr. Houston's motion pointed out that not even a "wisp of prejudice" had been alleged, citing Harling v. United States (D.C. Cir. 1968), 401 F. 2d. 392, the indictment against Houston was dismissed. With regard to Houston then, the Trial Judge's ruling was correct since the very assumption of the speedy trial requirement is that unreasonable delays are prejudicial by their very nature and it is not generally necessary for the Defendant to demonstrate that he has been prejudiced. Hedgepeth v. United States, 364 F. 2d 684, n.3, 686 (D.C. Cir. 1966).

The Government's Failure to justify this delay of 21-1/2 months should be cause for reversal of the conviction and dismissal of the indictment per se. In McNeill v. United

States, (D.C. Cir. No. 21570, decided June 4, 1968), the Court held:

> "[W]e conclude that the delay was the result of either gross negligence or a callous indifference to the requirements of speedy trial, despite the fact that the burden is on the Government, not the defense, to bring a case to trial. The record clearly establishes that the Government has not borne its burden of establishing that the appellant's right to a speedy trial has not been abridged. The case is reversed and remanded to the District Court with instructions to dismiss the indictment."

Thus, in a case of this sort, involving a long unexplained delay between arrest and trial, prejudice should not be in issue.

Even if the question of actual prejudice was material it is encumbent on the Government to affirmatively establish the absence of any prejudice to an Accused arising out of an extended delay in trial. Thus, in Smith v. United States, (D.C. Cir. No. 22157, decided May 7, 1969) a delay of only 13 months was sufficient to shift to the prosecution a heavy burden of showing that there was no prejudice to the defense."

Finally, even if it were encumbent upon the Appellant to make an initial showing of prejudice, demonstrable prejudice to the Defendant did occur in this case

because of the Government-caused delay. For one thing, prejudice may be presumed from the indigence of the Defendant and a delay of substantial length. United States v. Parrott, 248 F.Supp. 196, 203 (D.C.D.C., 1965). In addition, it is apparent that a substantial part of the Accused's defense clearly was prejudiced by the delay.

Essentially this was a case where the jury had to pass on the credibility of two witnesses — the Complainant and the Accused. Their testimony was in direct conflict on the vital factual issue of whether the fight began because of an attempted robbery or because of a heated argument over a loan. Central to this issue was whether or not the two men knew each other previously to the incident because if they did know each other (1) it lends credence to the Accused's testimony that he loaned the Complaining Witness money, and (2) it makes it less likely that the Accused would have attempted to rob the Complaining Witness, because he would be exposing himself to easy identification and capture, and (3) it attacks the general credibility of the Complaining Witness, Mr. Scott.

On cross-examination, after he had testified that he knew the Complaining Witness and had loaned him money,

Mr. Tinsley was unable to recall the names of people who had been gaming in the gambling place at the time he had made the loan to Mr. Scott (Tr. 116, 117). This cross-examination took place almost two years after the incident in question. His inability to recall the names of potential corroborating witnesses to the loan transaction was highly damaging to his credibility and quite prejudicial to his defense. The argument might be raised that anything so important to a defense would be fixed in mind and not forgotten despite the lapse of time, but this argument is clearly fallacious. The much more probable explanation was that Mr. Tinsley was telling the truth about his relationship with Mr. Scott, and never expected the Complaining Witness to deny knowing him. Accordingly, he did not consider knowledge of these names important to his defense and did not try to fix them in his mind. Then, when he was confronted with the surprising testimony of the Complaining Witness at the trial almost two years later, he could not remember those names. In a jury trial where the verdict hinged on the credibility of the Complainant and the Accused, this inability to remember must have been prejudicially damning to the Accused.

II. THE ACCUSED WAS DENIED HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL BECAUSE THE ACTIONS OF THE TRIAL JUDGE AND THE PROSECUTING ATTORNEY WERE PREJUDICIAL TO THE CREDIBILITY OF HIS DEFENSE.

(The Court is respectfully referred to the entire 172 page Transcript.)

This case was decided by the jury by answering a single very close factual question whether the fight began as a robbery attempt or whether it began because Mr. Tinsley had loaned Mr. Scott some money and Mr. Scott refused to repay that money. The arresting policemen testified that they saw no robbery attempt (Tr. 61, 75), only the fight in progress (Tr. 56, 75). There was no evidence other than Mr. Scott's testimony to connect the gun with Mr. Tinsley: the two policemen and Mr. Houston did not see the gun until Mr. Scott showed it to them (Tr. 60, 76), and the gun was neither tested for fingerprints nor traced (Tr. 62). Indeed, the only evidence of the alleged robbery itself was the testimony of Mr. Scott. In direct conflict with this testimony was Mr. Tinsley's testimony that the fight began with a heated argument over repayment of a loan (Tr. 90). Mr. Houston's testimony that he did not see a gun nor hear any threats (Tr. 132) tended to corroborate Mr. Tinsley's testimony and

refute that of Mr. Scott. Thus, the question for the jury became quite clear were they to believe Mr. Scott or did they believe Mr. Tinsley, reinforced in part by Mr. Houston?

If the jury were to perform their function in this case, it was the responsibility of the Trial Judge to insulate them from the opinions of outsiders as to the relative credibility of Messrs. Scott, Houston and Tinsley. This insulation encompasses not only protection against improper suasion by the prosecution, but by the judge as well. Unfortunately, the Trial Judge not only failed to provide this insulation, but in fact, in combination with the Prosecutor, made it clear to the jury that he believed the testimony of Messrs. Houston and Tinsley to be sheer fabrication. In short, the Trial Judge's conduct throughout the trial damaged Mr. Tinsley's credibility because it indicated to the jury that the Court believed Mr. Scott and not Mr. Tinsley, and the Trial Judge and the Prosecuting Attorney together damaged Mr. Houston's credibility by repeatedly implying that he also would stand trial for the same crime at some other time, when in fact, the indictment against Mr. Houston had been dismissed. In a case as close as this one, where the verdict depended absolutely on the credibility of the three principal

witnesses, it is submitted that these factors served to deny Mr. Tinsley a fair and impartial trial.

It is axiomatic that a fair trial demands that the Trial Judge conduct the trial with complete disinterestedness, and if that demand is not met, the judgment must be reversed. Peckham v. United States, 210 F.2d. 693 (D.C. Cir. 1953). The Trial Judge of course is not required to remain absolutely passive but may take part in questioning the witnesses. Yet it follows that this participation must be impartially discreet so that it does not become a factor in the jury's determination of factual issues, if the proceeding is to be a trial and not an inquisition. The cumulative effect of many small incidents of the Trial Judge's participation during the course of the trial clearly indicated to the jury that he believed Mr. Scott, not Mr. Tinsley. Because the case hinged so heavily on the conflict in this testimony, it is submitted that this indication of the Trial Judge's personal opinion did become a factor in the jury's determination of factual issues, and resulted in a denial of Mr. Tinsley's right to a fair and impartial trial.

These indications of the Court's disbelief of Mr. Tinsley's story are not patent. They are insidious and

therefore much more damaging, since once having been unconsciously recorded on the thought processes of the jury they could not be removed by the single instruction given the jury on the respective roles of the participants in a judicial proceeding. Accordingly, it is the flavor of the entire Transcript which best demonstrates the cumulative impact of these many seemingly insignificant incidents. It is respectfully requested that this Court read the entire Transcript to discover this flavor since the Transcript is only 172 pages long.

It is requested that the Court pay particular regard to the following sections bearing in mind that it is the cumulative effect of these sections that is crucial.

The Trial Judge continually showed patience, closely akin to sympathy during the testimony of Mr. Scott, sometimes answering for the Witness. This is particularly exhibited on pages 24-25, 29-30, 31, 36, 37, 38, 52, and 146 of the Transcript. Of particular note is the fact that the Trial Judge refused to allow Defense Counsel to impeach Mr. Scott by asking him why he left the employ of the Home Juice Company (Tr. 24, 25). In contrast, when Mr. Tinsley was on the stand, several times the Trial Judge intervened at crucial

moments not to answer as it had done for Mr. Scott but to ask questions of Mr. Tinsley. Thus while Mr. Scott was aided by the Trial Judge when he was being cross-examined, Mr. Tinsley was subjected, in full view of the jury, to interrogation by two hostile inquisitors. For example, when Mr. Tinsley was explaining on cross-examination that he had been gambling at 1831 Corcoran Street on January 14, a place where he had often seen Mr. Scott, the Prosecution asked who lived at 1831 Corcoran.

"Q. [the Prosecutor]: And who lives there?

A. A friend of mine.

Q: His name wouldn't be John Houston, would it?

A: No, no.

THE COURT: Who was it?

THE WITNESS: It was a friend named James.

THE COURT: James what?

THE WITNESS: James -- I don't know his last name. We call him Sweetie Pie.

THE COURT: You have been gambling with him there a long time and you don't know his name?

THE WITNESS: We just call him Sweetie Pie, Your Honor.

THE COURT: All right." (Tr. 102)

The Trial Judge's question "You have been gambling with him there a long time and you don't know his name?" was a clear indication he found the fact that Mr. Tinsley only knew the man's nickname to be incredible.

Only a few minutes later in the cross-examination, when Mr. Tinsley was having difficulty recalling the name of the man who ran another gambling establishment where he had seen Mr. Scott in the neighborhood, the Trial Judge interjected another sharp question:

> "Q. [the Prosecutor]: Then you have seen him in other places gambling?
>
> A: Yes.
>
> Q: Which places had you seen him gambling other than 1831 Corcoran?
>
> A: It's quite a few places in that block.
>
> Q: Just name them for us.
>
> A: You have one 1827.
>
> THE COURT: Who ran that one?
>
> THE WITNESS: Oh, well, I don't know, Your Honor. Different people have different games there in the place." (Tr. 112)

Finally, Mr. Tinsley was asked to remember the names of some of the people present when he had loaned Mr. Scott money. The Trial Judge entered into the questioning:

"Q. [the Prosecutor]: Who was with you at that time?

A. Quite a few fellows was gambling there.

Q. Fine. Just give us the names, please.

A. One minute. I am trying to think.

THE COURT: You said what?

THE WITNESS: I said I was trying to think.

THE COURT: All right, go ahead and think.

(Pause.)

THE WITNESS: I forget.

THE COURT: Let the record show the defendant was thinking from one to two minutes before he answered."
(Tr. 116)

It is quite important to remember that these last three exchanges in particular occurred during the most vital part of Mr. Tinsley's defense, when he was trying to establish that he had known Mr. Scott for several years and had loaned him money. If the jury believed this testimony then they would have acquitted Mr. Tinsley. Thus the Trial Judge's evident disbelief was not only strikingly different than his patience with Mr. Scott, it occurred at the worst possible time, a climax in the cross-examination of Mr. Tinsley when the jury undoubtedly was very attentive to the Trial Judge's reactions.

It is submitted that because the case turned on whether Mr. Tinsley knew Mr. Scott, that these exhibitions of disbelief in Mr. Tinsley's testimony when considered with the Court's kind patience with Mr. Scott became a factor in the jury's determination of the factual issues and thus constituted a denial of Mr. Tinsley's right to a fair and impartial trial.

Secondly, the Trial Judge and the Prosecuting Attorney acted in a manner that served to damage the credibility of the only other defense witness, Mr. Houston, by implying to the jury that he, too, would be on trial for robbery. The police officers had testified that they arrested Mr. Tinsley and Mr. Houston (Tr. 56). Mr. Houston had been indicted for robbery in connection with the alleged crime, but the indictment had been dismissed. No mention of this dismissal was made at trial. In fact, the Prosecutor referred to Mr. Houston as the "defendant" (Tr. 71) and referred to Mr. Tinsley as "the other defendant, Mr. Tinsley, who is on trial here?" (Tr. 72) Thus, the jury was left with a strong impression that Mr. Houston would soon be tried for his part in the alleged crime, again solely on the testimony of the Complaining Witness, Mr. Scott. Accordingly, when the Trial

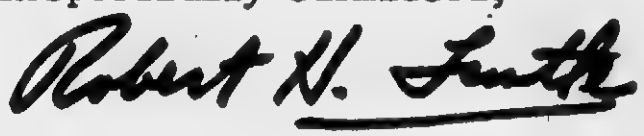
Judge charged the jury on the credibility of witnesses, Mr. Houston might well have appeared to have had a "motive for not telling the truth," (Tr. 158) and to have an "interest in the outcome cf this case." (Tr. 158) If there was any question in the jury's mind that Mr. Houston had such a motive and interest, the Trial Judge dispelled it by immediately proceeding to read the indictment citing both Mr. Tinsley and Mr. Houston (Tr. 158) and then set the matter in concrete by stating that "here we are only concerned with Tinsley," thereby creating the clear impression that Mr. Houston would be facing Mr. Scott's accusations at some other time and place.

By thus implying that Mr. Houston was also charged with robbery, the Court and the Prosecution not only damaged the credibility of the Accused's only other witness, but lent credence to Mr. Scott's accusation that Mr. Tinsley was robbing him when Mr. Houston approached. When this prejudicial implication is added to the prejudicial effect of the Court's visible disbelief of Mr. Tinsley's testimony, it becomes even more clear that Mr. Tinsley was denied his constitutional right to a fair and impartial trial.

CONCLUSION

For the reasons stated above, the Appellant's conviction should be reversed and an order entered dismissing the indictment against him, or in the alternative, the Appellant should be granted a new trial.

Respectfully submitted,



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I gratefully acknowledge the valuable assistance of Don Kennedy, student at Harvard Law School, in the preparation of this Brief.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Brief for Appellant on the United States Attorney by personally delivering same to Room 3600 E, United States Court House, 3rd Street and Constitution Avenue, N. W., Washington, D. C.

Robert H. Turtle

July 23, 1969

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22, 68h

UNITED STATES OF AMERICA,

Appellee,

v.

EUGENE H. TIMSLEY,

Appellant.

SUGGESTION

APPELLANT'S PETITION FOR A RE-HEARING EN-BANC FROM THE ORDER OF THIS COURT AFFIRMING APPELLANT'S CONVICTION OCTOBER 27, 1969

Eugene H. Timsley
Appellant
Box 25,
Lorton, Virginia

QUESTION PRESENTED :

I : At the close of the Government's case in chief counsel for the defense moved for a direct verdict of acquittal. As to the question herein presented should not the court have granted appellant's counsel's motion when there was insufficient evidence to enable a jury to conclude beyond a reasonable doubt that he the appellant had actually made an attempt to rob the complainant of his property.?

II : Did the trial court error in failing to instruct the jury as to whether or not the attempt if such an attempt was made to take property that was rightfully appellant from the complainant sufficient evidence to sustain a verdict of guilt as to the offence of robbery?

III : Was the delay of 21/and ½ months from the date of appellant's arrest and the date his trial actually got under way a denial of his rights under the Sixth amendment a denial of the right to a fair and speedy trial?

JURISDICTIONAL STATEMENT

I : Appellant appealed from the order and judgment imposing restraint of five to fifteen years stemming from a conviction in the United States District Court by the Honorable Judge Hart, United States District Court Judge, for the District of Columbia Circuit. And dated December 13, 1968, under section 2901 of Title 22:DCC Section 2901, 502, and section 32Ch.

Judge H art, who presided over appellant's trial granted Leave to proceed in appeal in forma pauperis into this court from its order and judgment imposed in district criminal number 196-68.

This Court retained jurisdiction to review the judgment under the Act of June 2h, 19h8, chapter 6h6, 62 Stat. 929; U.S.C. 1291 and Rule 37, Federal Rules Criminal Procedures.

On October 27, 1969, after oral argument by appellant's counsel and counsel for the Government affirmed. Before: Bazelon, Chief Judge; Mc Gowan and Robinson, Circuit Judges. No Opinion.

STATEMENT OF CASE

Appellant was arrested January 14, 1967, in connection with an alleged assault, and attempt Robbery, within the District of Columbia. The offense as herein charged stemmed from appellant's attempt to take from a Mr. John C. Scott the sum of $ 50.00 in monies owed to him stemming from a gambling loan (Tr.90). Mr. Scottthe complaining witness alleged that he was employed as a route calesman's for the Home Juice Service Corporation. On the date in question he was approached by a man offering to buy some orange juice (Tr.8). And, that this man, whom Mr. Scott identified as appellant got into the truck with him, pulled a gun, and in - formed him that this was a hold up. (Tr.10). That he gave appellant the sum of $ 110.00 in a plastic bag he carried in the truck, and appellanr took some cigars from the dashboard (Tr.10). Mr. Scott, then caused the truck to buck by shifting gears, throwing appellant to the floor. (Tr.38); A scuffle ensued between Mr. Scott and appellant inside the truck and continued on the ground outside (Tr.12). A second person intervened. The police was subsequently called by a by stander and arrived on the scene of the alleged disorder and arrested appellant and a Mr. Houston. After the arrest of appellant by officer Bell, $ 100.00 was found on the ground beside the truck, (Tr.15) and a gun was also found inside the doorway of the truck (Tr.18). The gun was turned over to the arresting officer by Mr. Scott after the two defendant's had been placed into

the police scout car of the arresting officers. (Tr.18). Mr. Scott had gone to the truck and returned to the arresting officers with the gun. At no time was it show that the appellant had actual had possession of a pistol or assaulted Mr. Scott with the gun only the statements as presented by Mr. Scott that the appellant had the gun was what led the jury to believe that appellant had carried the gun on or about his persons with the intent to assault or rob the com - plainant. The two officers that arrested appellant Officer Brashears, and Officer Joseph F. Bell did not testify as to an alleged robbery a s claimed by Mr. Scott. The complainant case was based solely on his own supported statements that he was forced to surrender money to the appellant and no more than this there was no evidence in support of his conclusion nor was there any evidence adduced at the appellant trial that he did not in fact know the appellant . Or on the other hand had not been in a gambling game with the appellant.

The sole testimony offered by the arresting officers in case by Officer Brashear's was that he saw three men fighting when he arrived (Tr.56). That it was Mr. Scott who actually surrendered the gun to them (Tr.60). That no fingerprints were taken from the gun, Nor was there evidence offered saving Mr. Scott's testimony that appellant had made an attempt to rob him with a gun. No one actually saw the attempt hold up saving Mr. Scott. Officer Bell stated that he found the sum of $ 11.00 on the person of Mr. Houston during a search of his persons at the precinct and no connection was made as to the $ 11.00 removed from his persons as being money taken from Mr. Scott.

The arresting officer further testified that he removed from the pockets of appellant three cigars and a pocket lighter (Tr.73). Thus the money the gun all of which was alleged to have been removed or taken from the complainant was returned to the police officer by Mr. Scott. In short, the appellant had not actually taken any thing from the complainant by force or through threats of bodily harm (Tr.75-77). No evidence was offered by the Government's Attorney that an offense of robbery, assault, or the third count of the indictment of carrying a dangerous weapon was committed by the appellant. The Government's case was bottomed solely on the statements made by Mr. Scott and certainly no more them this.

At the close of the Government's case, Defense counsel asked for a direct verdict on all three counts in which appellant was charged. His motion was denied (Tr. 85, 87). And it is from this denial that appellant seeks a Re-Hearing en-banc to determine whether or not the denial of his motion for a direct acquittal should have been granted by the trial judge after the close of the Government's case, when such evidence as offered by the prosecuting attorney had failed to meet its burden of proof as to the offenses in which the appellant was charged.

Should not the court have granted appellant's counsel's motion for a verdict of a direct Acquittal when there was insufficient evidence to enable a jury to conclude beyond a reasonable doubt that appellant had made an attempt to rob the complainant witness.

In Vaughn v. United States, U.S. App. D.C. No. 21, 066 Opinion filed February 9, 1968. In a similar situation this court so reasoned " We have concluded that appellant motions for acquittal based on the lack of evidence that they " by force or violence took anything from the complainant should have been granted. There was testimony tending to prove that the appellant attempted to rob the complainant of his wallet, That there was a conflic during which the complainant could have lost his watch, and that the watch was later founded in the car with the appellants But, there was no direct evidence that either of the appellant's intentionally took the watch from the possession of the complainant: And, under the circumstances shown on this record, there was insufficient evidence to support an inference that either had intentionally had done so. As to appellant's case indeed there wa s a struggle both inside and out side of the truck, there was no evidence the appellant had seized any thing from the complainant.. The sole evidence offered was that Mr. Scott's testimony was that he handed appellant the plastic money bag and yet he was able to reach over put the vehicle in gear and then jerk appellant in such a fashion that caused the appellant to fall resulting in the loss of his balance and then the fight started. (Tr.12). Under these circumstances there can be little or no doubt as to force or violence caused by the

appellant that would have indicated that he was trying to rob Mr. Scott as he alleged he was. Absent such proof there was insufficient evidence to have presented the case to the jury as to the offense charged in the indictment.

II: Did the trial court error in failing to instruct the Jury as to whether or not the attempt in such an a by placing in fear or the will ful taking of Mr. Scott's money and cigars a violation of the statute in question charging the offense of Robbery that an a rightfully that of the appellant's.

Appellant contended at his trial that he had loaned money to Mr. Scott, stemming from a gambling debt. That upon seen Mr. Scott in the general area where they had gambled in time past he asked him for his money and this request subsequently lead into a fight between the two that resulted in the appellant's arrest and this conviction. (Tr.89-90). Upon the arrival of the arresting officers Mr. Scott then alleged that he an a being robbed by the appellant and a Mr. Houston. There were no prints taken from the gun handed over to the arresting officers by Mr. Scott, nor were records check for ownership of the weapon that was disclosed at the appellant's trial as belonging to him. The sole evidence established by the government that the gun an a the property of the appellant's was through the testimony of Mr. Scott. In Richardson v. United States, U.S. App. D.C. 403, F.2d 575,576, the defendant had testified that instead of robbing the complainant

he had confronted the complainant and taken money from his pocket in payment of an over due gambling debt. This Court reversed the conviction because the trial judge had refused to instruct on the defendant's claim of right, and so holding (If the defendant believed in good faith that he was entitled to money -- he did not have that specific intent) " To take the property of another and was entitled to an instruction " to that effect 403, F.2d at 573, 576, Richardson goes no further 403, F.2d In Cooper v. U.S. supra note 11, 94 U.S. App. D.C. at 366, 218 F.2d at 42 this court there said " Guilt according to a basic principle in our jurisprudence, must be established beyond a reasonable doubt. And, unless that result is possible on the evidence, the judge must not let the jury act; he must not let it act on what would necessarily be only surmise and conjecture, without evidence." Yet in appellant's case the sole evidence presented at appellant's trial was the testimony of the complainant witness there was no showing of force or fear nor was there a showing that the appellant had actually takenanything from Mr. Scott, to say the least of robbery at best the slight evidence suggested by Mr. Scott that he had been ordered at gun point to hand over the money seems to fail or totally fail on this score when some later he himself comes to the officer not only with the money but the gun as well. On such evidence there was not a case for the jury and appellant's counsel's motion for a direct verdict of not guilty should have been granted.

III : Was the delay of 21 /and ½ months from the date of the Appellant's arrest and the date of his trial actually Got under way a denial of his rights under the Sixth Amendment a denial of the right to a fair and speedy Trial ?

Accordingly, the Appellant clearly was not at fault and in no way contributed to any delay in his trial on counts two and three of the indictment, ADW and CDW, and, if his exercise of a constitutionally protected right can be deemed to have contributed to the delay in his trial on the robbery count, that contribution is limited to a total of 73 days or less than two and one-half months of a total delay over 21-½ months. Thus, the Government must bear the responsibility for at least 19 months of delay in the trial of the robbery charge. During which resulted resulted in the loss of memory and contact with witnesses on his behalf this court has said no less than this that such a delay prejudice his defense and did not accord him a fair and speedy trial as stated in Smith v. U.S. U.S. App. D.C. (1964) Petition of Prewee, Beaver v. Hubert Smith v. United States, D.C. Cir. No.22,157, decided May 7,1969. WHEREFORE, Appellant respectfully prays for the granting of the motion.

CERTIFICATE OF SERVICE

I, Eugene J. Tinsley do certify that I have served a copy of this motion upon the United States District Attorney by depositing a copy into the U.S. mail .

Eugene E. Tinsley
Appellant

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v. No. 22,684

EUGENE H. TINSLEY,

Appellant

APPELLANT'S PETITION FOR REHEARING

The Appellant, by his counsel, Robert H. Turtle, respectfully petitions this Honorable Court for a rehearing of the above entitled cause, as it is his opinion that certain points of fact and law, as follows, may have been overlooked or misapprehended by the Court at the time it entered its judgment affirming the judgment of conviction entered by the United States District Court for the District of Columbia.

I. General:

The judgment of this Court entered on October 27, 1969, was not accompanied by an opinion. Accordingly,

the Appellant can only surmise the possible basis for the Court's decision and will address himself to them.

II. The Appellant Was Not Responsible For the Delay:

The Trial Judge had disposed of Mr. Tinsley's motion to dismiss the indictment on the grounds that Tinsley had caused the delay. This ruling was incorrect as a matter of fact and law. (See pages 18-19 of the Appellant's Brief.) In fact, Tinsley never asked for any continuance or delay. His only contribution to the delay was his immaterial plea on November 28, 1967. That plea was withdrawn on motion granted on February 9, 1968. The total time involved was two months and ten days.

The Trial Judge apparently felt that since Tinsley could have had a trial on November 28, 1967, any subsequent delay in trial resulted from his plea on that day. This position is hinted at by the Appellee's Brief, page 8:

> "We think it is apparent that appellant could have been tried as early as November 28, 1967, when he decided to plead guilty .... "

But as a matter of fact it is not true. On the robbery count the Appellant could have been brought to trial as early as February 9, 1968. And even allowing for the Government's correction of its error in dismissing the other two counts of the indictment, the Appellant could have been tried on all three counts as early as March 8, 1968.

As a matter of law, there is no validity to the proposition that a criminal defendant will be held responsible for any delay that occurs after his first opportunity to stand trial.

Thus, in Hinton v. United States, No. 22,068, decided in this Circuit on October 14, 1969, the Court went on to consider the responsibility for a five-month delay that followed the new trial date set after a continuance was granted at the request of the defense despite the fact that the defendant already had had his first opportunity for a trial and had rejected it.

Accordingly, this Court should rule that the Trial Judge erred when he denied Mr. Tinsley's motion

to dismiss the indictment on the grounds that Tinsley had caused the delay, while granting that of the co-defendant, Houston. On that basis, the Court should reverse the judgment of conviction.

III. The Government is Responsible for All Delay After February 9, 1968, and Has Not Provided An Adequate Excuse for Most of That Time:

The Government has contended that at best it could be charged with slightly over seven and one-half months of the extraordinary delay (that delay which followed the November 28, 1967, trial date). This is based on a series of computations on pages 8 and 9 of the Appellee's Brief, with which the Appellant is supposed to agree. He does not!

The Appellant believes that all of the delay following the granting of Mr. Tinsley's motion on February 9, 1968, eight months and twenty days, is chargeable to the Government. The Government argues that it was allowed additional time to obtain a new indictment because "an inadvertent departure from the usual procedure ... " had resulted in the dismissal of the two lesser counts of the indictment.

Appellant argued that this was no excuse for a failure to proceed promptly with a trial on the robbery count and that in any event the accused should not be made to suffer for the Government's negligence. He is still of that opinion, but he feels that it is his duty to impress upon this Court that even if the Government's excuse is accepted, it only explains a month of the extraordinary delay. Tinsley was reindicted on all three charges by March 8, 1968. What then? What of the next seven and one-half months?

The Government explains that period at pages eight and nine of its Brief. More important is the argument put forth in footnote 6 on page 9:

> "Even had this case been certified sooner, we assume a large measure of this time would have been consumed by court congestion and administrative delay. We note that between the first indictment and trial, though neither side asked for any continuance, the interval was seven and a half months."

The Government seems to think that because a seven and a half month delay between indictment and the trial date was not unreasonable the first time around,

ipso facto, it is not unreasonable the second time either. This view of a constitutional right to a speedy trial is clearly incorrect and cannot be accepted by the Court. It must be corrected. Whether the original delay is the fault of the accused or the prosecutor, the Government must take all possible steps to minimize the delay. Thus, the Judicial Conference of the United States has declared all criminal cases pending for more than one year where defendants are available for trial a "judicial emergency." (See press release of the Conference, November 1, 1969.)

The Appellant believes that the prosecutor's actions between March 8, 1968, and November 1, 1968, and the explanation offered in footnote 6, quoted above, establish such a callous indifference to the requirements of speedy trial as to require reversal and remand to the District Court with instructions to dismiss the indictment. McNeill v. United States, D. C. Cir. No. 21570, decided June 4, 1968, discussed at pages 20-21 of the Appellant's Brief.

CONCLUSION

Based on the foregoing, the Appellant respectfully petitions this Court to withdraw its judgment entered October 27, 1969, and enter a new judgment reversing the judgment entered in the District Court and remanding with instructions to dismiss the indictment.

Respectfully submitted,

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Washington, D.C. 20006

Attorney for the Appellant
(Appointed by the Court)

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Petition for Rehearing on the United States Attorney by delivering same to Room 3600 E, United States Courthouse, 3rd Street and Constitution Avenue, N.W., Washington, D.C., on the _____ day of December, 1969.

Robert H. Turtle

Robert H. Turtle